

1 UNITED STATES DISTRICT COURT  
2 FOR THE WESTERN DISTRICT OF PENNSYLVANIA

3 ERIC JETSON LYONS,  
4 Plaintiff

5 VS.

:  
:  
:  
: CIVIL DOCKET NO.:  
: 03-CV-75

6 JOSEPH EMERICK, LT., JAMES :  
7 SKINDELL, G. McSHANE, DET., :  
8 SHAWN VAN SLYKE, SPECIAL :  
9 AGENT, J. DIBELLO, OFFICER, : Cause No. 42:1983  
10 KATHY LEOPOLD, LPN, GEORGE : Prisoner Civil Rights  
11 WELLSBY, BUSINESS SONAR, :  
12 1177 EAST GORE ROAD, ERIE, :  
13 PA 16504, and OFFICER :  
14 McLAUGHLIN, :  
15 Defendants :

16 BE IT REMEMBERED THAT on May 18, 2005, commencing  
17 at 10:30 a.m., at the offices of Judge Baxter, Federal  
18 Courthouse, Erie, Pennsylvania, taken before and by  
19 Kay Trigilio, Court Reporter and Notary Public for the  
20 Commonwealth of Pennsylvania, the following  
21 proceedings were had.

22 For the Plaintiff:  
23 Eric Jetson Lyons, Pro Se

24 For the Defendants:  
25 Gerald J. Villella, Esquire  
City Solicitor's Office  
626 State Street, Room 525  
Municipal Building  
Erie, PA 16501

For the Defendant, Shawn Van Slyke:  
Rebecca Ross Haywood, Esquire  
United States Attorney's Office  
700 Grant Street, Suite 400  
Pittsburgh, PA 15219

REPORTED BY KAY TRIGILIO, RPR  
FERGUSON & HOLDNACK REPORTING, INC.

1 THE COURT: I have a huge file. What I'm going  
2 to do is call the case first and tell you who is in my  
3 room, and then I would like everyone to identify  
4 themselves for the record and tell me who is listening to  
5 this hearing from where you are.

6 This is civil action number 03-75 Erie, Eric  
7 Lyons versus Lieutenant Joseph Emerick, et al. In my  
8 conference room I have the court reporter, my staff  
9 attorney, Cynthia Sander, Esquire, Defendant George  
10 Wellsby, and Attorney Jerry Villella, who represents  
11 Defendants Emerick, Skindell, DiBello and McLaughlin.

12 MR. VILLELLA: And also McShane, too.

13 THE COURT: And McShane. Now, would everyone tell  
14 me who else is listening to this conversation?

15 MS. HAYWOOD: Rebecca Haywood from the United  
16 States Attorney's Office. I represent Special Agent Shawn  
17 van Slyke.

18 THE COURT: Anyone with you, Ms. Haywood?

19 MS. HAYWOOD: No. I'm in a conference room.

20 MR. LYONS: Eric Lyons. I'm pro se on this case  
21 here.

22 THE COURT: Mr. Lyons, are you on a conference  
23 phone or a handheld?

24 MR. LYONS: I'm on a handheld phone.

25 THE COURT: All right. Is there anyone there with

1 you in the room?

2 MR. LYONS: I'm with the unit manager of the  
3 department, I'm in here, and another officer standing by.

4 THE COURT: Where are you, Mr. Lyons?

5 MR. LYONS: I'm in the office of the unit manager  
6 at LTSU, SCI, Fayette County.

7 THE COURT: SCI, Fayette County, that's what I  
8 wanted to know. Anyone else?

9 MR. LYONS: There's no one else here.

10 THE COURT: Is there anyone else on line? All  
11 right.

12 We are here to move this case along. Now that a  
13 Final Order on my report and recommendation has been  
14 entered, which granted in part and denied in part the  
15 Defendant's Motions for -- Motions to Dismiss and/or Motion  
16 for Summary Judgment, and we are to try to get this case  
17 moving along because it's already two years old, and the  
18 plan of this Court is to have it tried in late summer,  
19 early fall, so we want to get moving.

20 I have here in front of me a Motion for Protective  
21 Order that was filed today by Defendants Emerick, Skindell,  
22 DiBello, McLaughlin and McShane -- sounds like a law  
23 firm -- and that has to do with the production of document  
24 requests made by plaintiff. So I think we can turn to that  
25 first, perhaps, but I also need to speak to Mr. Wellsby,

1 because other than your Answer, we really don't have much  
2 participation by you, so we wanted to see where you were on  
3 all of these things.

4 I'm going to ask -- first of all, I'm going to  
5 talk to Mr. Lyons first. Mr. Lyons, do you understand that  
6 as the plaintiff in a civil case you have to pay for the  
7 copying costs of all documents produced to you in  
8 discovery?

9 DEFENDANT LYON: I have to pay for the copying  
10 costs?

11 THE COURT: Yes, that's correct, because you are  
12 the plaintiff; you're the one bringing the lawsuit. So  
13 when you request documents -- how it works, if you were not  
14 in prison, how it works for a plaintiff is they would go or  
15 their attorney would go to the solicitor's office, and all  
16 the documents would be in the room, and they would go  
17 through them, and they would tab or tell them, "I want  
18 copies of these." They wouldn't ask for all of them to be  
19 copied because they don't need them all, and they couldn't  
20 afford them all, so they would say, "I want copies of these  
21 things," and then they would pay for the copying costs, and  
22 then they would have them sent to them at their own  
23 expense.

24 Now, because you are incarcerated, you aren't able  
25 to go to the documents and go through them and see what you

1 need. So because it would cost you so much to get the  
2 numbers of documents that you have asked for, you may wish  
3 to whittle some down, anyway, and then we will also talk to  
4 defendants here and see what their reason is that they need  
5 a protective order from all of your requests. So I want  
6 you to keep that in mind.

7 And now I will turn to Mr. Villella and ask him to  
8 explain to me the basis for his request for a protective  
9 order and ask him if, in fact, that protective order would  
10 go to all of the documents requested by the plaintiff.

11 MR. VILLELLA: I've been looking through his list  
12 of requested documents. He's going to trial, as I  
13 understand, on the very narrow issue of whether he was  
14 roughed up during the collection of hair and blood samples  
15 by these individual police officers, defendants, and I  
16 guess by, allegedly, the FBI agent. He has not made any  
17 allegation or named the City as a party, and he's asked for  
18 a lot of documents that relate to history and practices  
19 such as deliberate indifference to excessive force, which  
20 are not in issue here; he hasn't made them an issue, so he  
21 can't make them an issue here now. I think he may be  
22 entitled to documents relating to the history of these  
23 individual officers --

24 THE COURT: Excessive force is gone?

25 MR. VILLELLA: Excessive force is still there.

1 THE COURT: I thought it was.

2 MR. VILLELLA: That's the only thing left is  
3 excessive force as to these individuals, but there's no  
4 claim that the City deliberately permitted it.

5 THE COURT: Or has a plan or policy?

6 MR. VILLELLA: Sure. And he's asking for a lot of  
7 these documents to see histories of what the City's  
8 policies were, et cetera, et cetera. I think he can see if  
9 there's anything in these individual officers' histories  
10 that they've been alleged or have been found to have  
11 committed excessive force.

12 THE COURT: I think number 1 is that, complete  
13 police service and history files, internal affairs, all  
14 investigations, histories, records, any reports of  
15 extraordinary occurrences, psychological treatments, those  
16 sorts of things for the five officers in the case, so those  
17 things you think are okay?

18 MR. VILLELLA: I think they're okay to the extent  
19 they relate -- like, for instance, psychological treatment  
20 if it relates to a claim of excessive force --

21 THE COURT: There may be a confidentiality  
22 treatment to that.

23 MR. VILLELLA: If they received psychological  
24 treatment for non-work-related things.

25 THE COURT: Did you hear that, Mr. Lyons?

1 MR. LYONS: Yes, I heard that.

2 THE COURT: Sometimes Mr. Villella's voice goes  
3 low, and I want to be sure you hear him.

4 MR. VILLELLA: Generally for the individual  
5 officers.

6 THE COURT: He's thinking number 1 is something he  
7 can do. Do you have any idea how many documents that would  
8 be?

9 MR. VILLELLA: At this point I don't know. I'm  
10 sure each of them has a personnel jacket in which I think  
11 reprimands are kept for two years. I think the union  
12 contract requires expungement of negative things after two  
13 years, so I don't know if there's any history before that,  
14 unless we have some other way of knowing about it. I don't  
15 know if these individuals have any such records, but I'll  
16 find out.

17 THE COURT: The second one is the policies,  
18 procedures, regulations -- what is left about Saint  
19 Vincent?

20 MR. LYONS: Excuse me?

21 THE COURT: What is left in the case about Saint  
22 Vincent? Is that the excessive force that was charged at  
23 Saint Vincent?

24 MR. LYONS: Yes.

25 THE COURT: Because Nurse Leopold is gone.

1 MR. VILLELLA: Right.

2 MR. LYONS: Yes.

3 THE COURT: So it would be what happened to you  
4 there at the hands of the officers?

5 MR. LYONS: Exactly.

6 MR. VILLELLA: He may be asking for documents that  
7 don't even exist. He's asking to see if there's anything  
8 that spells out the relationship between the City and Saint  
9 Vincent Health Center as far as how evidence is collected  
10 from arrested suspects. I don't know that there's any such  
11 documentation.

12 THE COURT: You can take a look. That might solve  
13 that one.

14 MR. LYONS: I believe that there should be some  
15 kind of documentation.

16 THE COURT: Mr. Lyons, you will find that whether  
17 it should be, there often isn't.

18 MR. VILLELLA: I'll find out.

19 THE COURT: He's going to check and see what there  
20 is. But I agree that that should be tightened up. That  
21 would be directly affecting how -- the persons who are  
22 charged with excessive force at the hospital and that would  
23 go directly to how they're allowed to restrain him to  
24 collect samples and those sorts of things, and that's  
25 limited to those things. We don't have large -- policies



1 and procedures generally are not at issue because there is  
2 not a Manel claim.

3 MR. VILLELLA: Right.

4 THE COURT: Number 3. Now, that is directly on  
5 Saint Vincent things. I know you sent these before there  
6 was a final order, Mr. Lyons, so at the time you sent  
7 these, actually, Nurse Leopold was not gone, I guess -- oh,  
8 she was; she's been gone for a while.

9 MR. VILLELLA: A few months, I think.

10 THE COURT: That's asking for the internal  
11 policies and procedures. I think that's irrelevant if you  
12 get the information from the City. Do you understand what  
13 I'm saying?

14 MR. LYONS: No. You're saying the internal  
15 policies of Saint Vincent is irrelevant?

16 THE COURT: Yes, because Saint Vincent is not a  
17 defendant in this case. How is that relevant?

18 MR. LYONS: I would deem it to be relevant if they  
19 are somewhat associated with the police department or have  
20 some kind of agreement with the police department. I mean,  
21 the two would coincide, wouldn't it?

22 THE COURT: How? How would you use that  
23 information? You think about how you would use it at  
24 trial. You can't bring anything against Saint Vincent  
25 because they are not a defendant in the case.

1 MR. LYONS: Not necessarily bringing anything  
2 against Saint Vincent, but I'm going to show that their  
3 policies at Saint Vincent don't -- are not in compliance  
4 with the policies and procedures which the police  
5 department has as far as excessive use of force or  
6 restraints or so forth.

7 THE COURT: If they have that, it doesn't do you  
8 any good because there's no one from Saint Vincent on  
9 trial. You see what I'm saying?

10 MR. LYONS: I understand your point.

11 THE COURT: As the case goes along, that's what we  
12 do; we narrow things down and get to the crux of the  
13 issues. So I think that 3 is out.

14 4, any and all copies of invoices or bills served  
15 upon Erie Bureau of Police by Saint Vincent for services  
16 rendered to the Erie Bureau of Police -- what's your need  
17 for that?

18 MR. LYONS: Well, again, to show, basically, that  
19 there was some activity or -- some activity between the  
20 two, that they were both in on the excessive use of force.

21 MR. VILLELLA: Mr. Lyons, in the first place, you  
22 got a lot of this supplied to you during the criminal  
23 trial. You got the records of what Nancy Leopold said  
24 happened or didn't happen. What are you looking for in  
25 terms of presenting your case?

1 THE COURT: These are bills or invoices, and I  
2 don't -- because there is not -- well, first of all, I  
3 don't know what you have in your -- what you have as far as  
4 the bills or invoices in your files. But I don't know how  
5 you'll use invoices and bills to prosecute a claim that you  
6 were injured by excessive force.

7 MR. LYONS: 3 and 4 are just cancelled because  
8 they both are one and the same.

9 THE COURT: Why do you need the insurance company  
10 information?

11 MR. LYONS: Basically, just for billing and to  
12 find out what policies that they are covered by.

13 THE COURT: You want to know where they're going  
14 to get their money to pay you?

15 MR. LYONS: Exactly.

16 MR. VILLELLA: I can give you something on that.

17 THE COURT: That's very tough to use in a jury  
18 trial under the rules, but you do have a right to some of  
19 that information. All right.

20 MR. LYONS: End up at 6.

21 THE COURT: That's 5, he's going to look into  
22 that. That doesn't require a lot of documents. That's  
23 more or less an interrogatory.

24 Code of ethics and professional conduct manual.

25 MR. VILLELLA: We have a police manual. We have a

1 use of force policy in writing. Service of search  
2 warrants.

3 THE COURT: I think that policy manual is fine.  
4 However, you don't have a claim against the police  
5 department, so keep that in mind. I know you can use that.  
6 I think it's relevant, and I rule that it's relevant, too.  
7 And that's not confidential.

8 MR. VILLELLA: I don't think so.

9 THE COURT: And that's relevant to his trying to  
10 show whether or not these defendants violated their  
11 procedures.

12 MR. LYONS: Would this cover everything I asked  
13 for as far as audio taping, videotaping?

14 MR. VILLELLA: If there's a videotape of your  
15 search or any aspect of your search or confession, we'll  
16 produce it, and I think we can get you a copy of that.

17 THE COURT: Do you think there was a videotape  
18 going as you were being searched? Do you have any  
19 knowledge of that?

20 MR. LYONS: I don't know what Saint Vincent would  
21 have had at that department. I don't know.

22 THE COURT: It's unlikely, if that had happened in  
23 an institution, but he'll check.

24 MR. LYONS: Okay.

25 MR. VILLELLA: Police report and dictation.

1 THE COURT: Don't you have the police report from  
2 your criminal trial?

3 MR. LYONS: I had a police report, but when I went  
4 back down to get my files, that criminal report was  
5 basically jumbled. Pages were missing. It was incomplete.

6 THE COURT: All right.

7 MR. LYONS: So I don't know that I have a complete  
8 copy of that.

9 MR. VILLELLA: It's a pretty thick report, and I  
10 don't know -- if he's looking for something that says we  
11 beat the heck out of this guy for no good reason, I  
12 guarantee you, you're not going to find that in there.

13 MR. LYONS: We don't know what we'll find in  
14 there. I'm looking for something specific, and it's not in  
15 my police report because it was taken out.

16 THE COURT: Well, if it's a complete report, it's  
17 just more cost for you, but, well, okay.

18 Complete telephonic transcription and recording of  
19 calls made by any of the named defendants to George  
20 Wellsby. If there are such things -- do you know if there  
21 are such things?

22 MR. VILLELLA: If there are -- if there is any  
23 contact, Mr. Wellsby would know what contact was made with  
24 whom and when.

25 THE COURT: Do you record those calls?

1 MR. VILLELLA: Calls coming in would get recorded  
2 and saved for some period of time.

3 MR. LYONS: I didn't hear that.

4 THE COURT: He said calls coming in are recorded  
5 and saved for some period of time, but he doesn't know if  
6 they're still saved. You can check on that and see, and  
7 then you can make an objection, if you want. But on a  
8 confidentiality basis for a protective order, that is not  
9 valid because George Wellsby is a defendant.

10 Number 9, complete telephonic description of  
11 certain calls made from any named defendants from the Erie  
12 Bureau of Police to Bob's Irresistible Auto Sales. Who is  
13 that?

14 MR. VILLELLA: That's him.

15 THE COURT: Is that a defendant?

16 MR. LYONS: They're not defendants, Your Honor,  
17 but they were a part of the individual case.

18 THE COURT: Here's the deal on that. If the calls  
19 were made from the Bureau of Police, he can look into that.  
20 But if the calls were made from Bob's, you have to subpoena  
21 him for documents like that.

22 MR. LYONS: The calls were made by the Bureau.

23 THE COURT: Let me talk to you about the relevance  
24 on that.

25 MR. VILLELLA: Yeah, that's a problem.

1 THE COURT: There might be a confidentiality  
2 protection that is given to the City on that because it's a  
3 person not involved in the lawsuit, so talk to me about  
4 what you need from there.

5 MR. LYONS: Basically, at this time -- this  
6 involved Mr. Wellsby -- there was a communication between  
7 police officers that were -- that the call was made to  
8 Bob's Irresistible, and they, in turn, contacted  
9 Mr. Wellsby and the conference call took place. That's  
10 where Mr. Wellsby became a part -- involved in the search  
11 of my vehicle.

12 THE COURT: You don't work with Bob's  
13 Irresistible, do you?

14 MR. WELLS: No, I don't. I have nothing to do  
15 with Bob's Irresistible.

16 MR. LYONS: He only had to deal with Bob's  
17 Irresistible with regards to repairing my vehicle.

18 THE COURT: That has to do with your underlying  
19 case; that doesn't have to do with the excessive force  
20 claim.

21 MR. LYONS: That has to do with my claim involving  
22 the search of my vehicle.

23 THE COURT: But I'm trying to think -- did Bob's  
24 search your vehicle?

25 MR. LYONS: No. Mr. Wellsby searched my vehicle.

1 THE COURT: I'm going to rule against that one,  
2 I'm afraid.

3 MR. LYONS: Why is that, Your Honor?

4 THE COURT: That's not relevant to the claims left  
5 in the case, and there's a confidentiality problem with  
6 that.

7 MR. LYONS: If I can -- this is the only way that  
8 I can prove that he searched my vehicle. You're dismissing  
9 that?

10 THE COURT: You can only prove that Mr. Wellsby  
11 searched your vehicle -- you can't ask Mr. Wellsby if he  
12 searched your vehicle?

13 MR. LYONS: I can ask him all I want, but he can  
14 deny it all he want.

15 THE COURT: He's under oath. He can't deny it if  
16 he's under oath if he did it.

17 MR. LYONS: He can't deny it if he's under oath?  
18 Yeah. Your Honor, if he's under oath, he can deny it all  
19 he like. I mean, people lie.

20 THE COURT: Then if he says one thing and you're  
21 going to come in with what evidence to say he's wrong?

22 MR. LYONS: This is the evidence I want to show  
23 he's wrong.

24 THE COURT: You say Bob's would know that  
25 Mr. Wellsby searched it?



1 MR. LYONS: No. I'm saying the conference call  
2 was taken between three phones, police department, Bob's  
3 Irresistible to Mr. Wellsby, and there was a communication  
4 between all three parties involving the search.

5 THE COURT: Can't you get that with a  
6 communication with Mr. Wellsby that was in Number 8?

7 MR. LYONS: I can get that through the  
8 communication if I had the police transcript.

9 THE COURT: They're looking to see if they have  
10 that. But, no, all of their calls to Bob's Irresistible, I  
11 cannot allow. I just can't. They're not in the case. But  
12 if it's a three-way call, you'll get it with what you're  
13 getting in Number 8, if that exists. Do you see what I'm  
14 saying?

15 MR. LYONS: Number 8 deals with --

16 THE COURT: Mr. Wellsby.

17 MR. LYONS: Yes, specifically.

18 THE COURT: And you said it's a three-way call.

19 MR. LYONS: I'm saying it's a three-way call.

20 THE COURT: So he'd be on it.

21 MR. LYONS: Okay.

22 THE COURT: That's the only way we can get to that  
23 stuff, if it exists, okay?

24 MR. LYONS: This is dealing -- this is two  
25 different calls here. I'm not talking about the call that

1 was made directly to Mr. Wellsby.

2 THE COURT: Yes, I know, but it says all calls  
3 between February 22 and January 30 of the next year, so all  
4 calls that include Mr. Wellsby that he's going to be  
5 looking for.

6 MR. LYONS: You don't understand what I'm saying.

7 THE COURT: No, I don't. I guess I don't. Try  
8 again.

9 MR. LYONS: I'll try again.

10 THE COURT: I'm listening. I want to make the  
11 right call. Go ahead.

12 MR. LYONS: Any calls that the police department  
13 made to Mr. Wellsby specifically with Mr. Wellsby by  
14 himself, I want that. Any calls that were made to Bob's  
15 Irresistible that transpired and connected Mr. Wellsby as  
16 well, I want that. That's the conference call. Two  
17 separate things.

18 THE COURT: Except your Number 8 is broad enough  
19 to include those because you're saying any calls between  
20 the police department and Mr. Wellsby, and that would be a  
21 call with them because he's on it.

22 MR. VILLELLA: Here's my question. Is Mr. Wellsby  
23 still in on the allegation that he acted as an agent of the  
24 police and violated the Fourth Amendment in some way?

25 THE COURT: Yes, because Mr. Wellsby didn't move

1 to dismiss. Mr. Wellsby didn't move to dismiss, so he's  
2 still here on all the claims.

3 MR. WELLSBY: I filed downstairs.

4 THE COURT: You filed an Answer.

5 MR. VILLELLA: You have to file a Motion to  
6 Dismiss.

7 THE COURT: Mr. Wellsby needs some help in that  
8 regard.

9 MR. VILLELLA: In which case he'll be out of the  
10 case.

11 MR. LYONS: Move on to Number 10.

12 MR. VILLELLA: You want solicitations for federal  
13 funding and grants. What does that have to do with  
14 anything?

15 THE COURT: Federal funding and grants. What's  
16 that about? You just want to know if they have enough  
17 money to pay you? You can't do that.

18 MR. LYONS: No. No. No. My claim was -- the  
19 claim I made was the violation of the First Amendment which  
20 was denied, and which was the federal statute 2000(b)(b),  
21 2000 (c)(c).

22 THE COURT: So that's out.

23 MR. LYONS: But you didn't deny that. You denied  
24 the First Amendment claim on the religious issue, but you  
25 did not deny the claim as far as 2000 (b)(b), 2000 (c)(c).

1 THE COURT: I don't know what that is.

2 MS. HAYWOOD: I think that's the Religious  
3 Reformation Act.

4 THE COURT: That's gone. That's gone.

5 MR. LYONS: That's gone?

6 THE COURT: Yeah, that's gone. 10 is out.

7 MR. LYONS: 11. Move on to 11. Yes.

8 MR. VILLELLA: Looking for any other suspects that  
9 were looked into?

10 THE COURT: I don't know if there are any, but you  
11 can't have their files. That's confidential.

12 MR. LYONS: It's confidential?

13 THE COURT: Their DNA files? You bet you.

14 MR. LYONS: Your Honor, I personally have the  
15 documentation of some of the suspects that were involved in  
16 the case, but what I wanted specifically was any of the  
17 suspects that went through the same thing that I went  
18 through.

19 MR. VILLELLA: That's Heck -- you want to see if  
20 anybody else was --

21 MR. LYONS: My claim is under the equal protection  
22 violation.

23 THE COURT: So you have some of those but you  
24 don't know what about those people that you have?

25 MR. LYONS: Excuse me, Your Honor?

1 THE COURT: You don't know what about -- you have  
2 this information?

3 MR. LYONS: I have information pertaining to some  
4 of the suspects that were investigated in the case.

5 THE COURT: Okay.

6 MR. LYONS: But what I don't have was the  
7 information -- on these suspects I do have information as  
8 far as Equal Protection Act, but what I don't have is  
9 information on the other suspects as far as their treatment  
10 involving the search. See, I have information pertaining  
11 to suspects that were searched differently than me. What I  
12 need is information of suspects that were involved in the  
13 case that were searched similar to me.

14 THE COURT: Do you know if there are any?

15 MR. VILLELLA: I don't know. First I question  
16 whether or not he's simply -- he's trying to undermine the  
17 basis of his conviction or find exculpatory evidence.

18 THE COURT: I think it's the equal protection  
19 claim.

20 MR. VILLELLA: To see if he was treated  
21 differently in some manner?

22 THE COURT: Yes.

23 MS. HAYWOOD: Is that claim still in the case?

24 MR. LYONS: Yes, it is.

25 THE COURT: There's so many claims, it's hard to

1 keep track. Let me ask, did you send similar production  
2 requests to Defendant Van Slyke?

3 MR. LYONS: Excuse me?

4 THE COURT: Did you send similar requests for  
5 production of documents to --

6 MR. LYONS: No, I haven't done anything on Mr. Van  
7 Slyke yet because I wasn't sure where we stood in regards  
8 to his summary judgment. Being that the judge had denied  
9 me on this one initially until he made a ruling on the  
10 summary judgment, I considered the same thing was going to  
11 be done with Mr. Van Slyke, so I haven't sent anything to  
12 him, but I intend to file one this weekend.

13 THE COURT: He didn't know how Van Slyke was going  
14 to be treated.

15 MS. SANDER: He wasn't treated.

16 THE COURT: But he is still in.

17 MS. SANDER: He hasn't had anything pending in a  
18 long time.

19 MR. LYONS: I can't hear anything. I hear  
20 mumbling.

21 THE COURT: Cynthia Sander was trying to explain  
22 to me that Special Agent Van Slyke was part of the last  
23 round. I'm getting them all mixed up. And the one that we  
24 just did was on the five City defendants.

25 MR. VILLELLA: He had a separate motion and that

1 was done earlier.

2 THE COURT: I understand. All right.

3 Now, what discovery, if any, do you need from  
4 Mr. Lyon, Mr. Villella?

5 MR. VILLELLA: We might send him some questions,  
6 interrogatories, asking what corroborative evidence he has  
7 to support the claim that he was mistreated during the  
8 search and seizure.

9 THE COURT: How about you --

10 MR. LYONS: I received Ms. Ross --

11 THE COURT: Ms. Haywood.

12 MR. LYONS: Ms. Haywood's interrogatories. I  
13 received hers.

14 THE COURT: Ms. Haywood, are you planning to  
15 pursue that which Judge McLaughlin reversed me on?

16 MS. HAYWOOD: Absolutely. I sent interrogatories  
17 with regard to two issues, primarily, the statute of  
18 limitations issue as well as the issue of corroborative  
19 evidence in the event the statute of limitations argument  
20 eventually fails. I was -- his responses are due to me  
21 early next week. After I received them I was intending to  
22 take his deposition, and then I intend to refile a summary  
23 judgment motion on the statute of limitations issue as well  
24 as the substance of his claim.

25 MR. LYONS: Your Honor, the statute of limitations

1 issue has been resolved.

2 THE COURT: No, that's not what happened,  
3 Mr. Lyons. See, I recommended to the District Judge that  
4 it would be resolved, as you remember. But then the  
5 District Judge disagreed with my recommendation and ruled  
6 otherwise.

7 MR. LYONS: Right.

8 THE COURT: He said that there wasn't enough  
9 information to make that determination, and he, in essence,  
10 reopened the argument if they want to make it, if they get  
11 more information.

12 MR. LYONS: He did that? I didn't see that.

13 THE COURT: He did that on the final order, March  
14 7.

15 MR. LYONS: On the final order he stated that --  
16 dig the final order out. I remember distinctively that he  
17 stated that because of the way the paperwork was sent to me  
18 with regard to the filing --

19 THE COURT: I'm sorry. This wasn't the most  
20 recent one. This was the first final order. He said it  
21 was premature.

22 MR. LYONS: Yes, because he said that looking at  
23 the way the documents were sent to me, he said that would  
24 be considered -- one would consider that he would have to  
25 file the documents after he received everything as a whole



1 instead of filing separately. Remember, because you had  
2 dismissed it because of the reason you said he could have  
3 filed it and then filed the other part later.

4 THE COURT: We're looking for it in the file.  
5 Hold on a second.

6 MR. LYONS: I'm doing the same, and my file is so  
7 thick.

8 THE COURT: Hold on a minute and we'll find his  
9 exact words and that will help.

10 MR. LYONS: Do you know what docket number that  
11 was?

12 THE COURT: We're looking.

13 MR. LYONS: I should have it right here.

14 THE COURT: Document 57 in our file. We're  
15 looking for it now. All right. Let's take a read.

16 MR. LYONS: 67?

17 THE COURT: 55 -- 57.

18 MR. LYONS: I have that here, yes.

19 THE COURT: "The plaintiff filed objections to the  
20 report and recommendation. Plaintiff continues to blame  
21 his failure to file this case within the statute of  
22 limitations period on the delay of prison officials in  
23 completing the paperwork necessary to file a motion for  
24 leave to proceed IFP. Plaintiff argues he would not have  
25 filed the Complaint which he knew -- that he could not have

1 filed the Complaint which he knew was due on or before  
2 February 21, 2003 because he did not have the documentation  
3 from the prison necessary for his motion for leave to  
4 proceed IFP. In support of this argument plaintiff  
5 attaches the instruction sheet provided to him by the Clerk  
6 of Courts which states if you are unable to pay the initial  
7 filing fee," and then he quotes that.

8 "Although Complaints are routinely filed every day  
9 without either the filing fee or a motion to proceed IFP,  
10 the instruction sheet from the Clerk of Courts could have  
11 led this pro se litigant to believe he couldn't file his  
12 Complaint without a motion for leave. Given the  
13 undeveloped state of the record, a dismissal based on  
14 statute of limitations at this time is premature."

15 So he left it open. So they can try to, with more  
16 documentation, dismiss the case again on that basis, but  
17 time is running out, Ms. Haywood.

18 MS. HAYWOOD: Absolutely, Your Honor. I  
19 understand that. And as soon as he responds to my  
20 interrogatories -- he told me on the telephone before you  
21 were on the call that he has asked for an extension, so I'm  
22 curious to hear about that, though we didn't receive that  
23 letter from Mr. Lyons.

24 THE COURT: We didn't, either. Why can't you do  
25 that in 30 days?

1 MR. LYONS: Because all my property is in my  
2 property.

3 MS. HAYWOOD: I sent these interrogatories in  
4 February.

5 MR. LYONS: I haven't had opportunities to get  
6 access to my property.

7 THE COURT: These are answers to interrogatories  
8 or are these production of document requests?

9 MS. HAYWOOD: They were both, Your Honor.

10 THE COURT: Who is there from -- who is your  
11 counselor who is there?

12 MR. LYONS: Excuse me?

13 THE COURT: You say you have a counselor there?

14 MR. LYONS: Yes.

15 THE COURT: May I speak to him or her?

16 MR. LYONS: Yes. Unit manager.

17 THE COURT: His name?

18 MR. LYONS: Mike Jenkin.

19 THE COURT: Let me speak to him, please.

20 MR. JENKIN: Hello?

21 THE COURT: Mr. Jenkin?

22 MR. JENKIN: Yes, ma'am.

23 THE COURT: My name is Susan Baxter, Judge Baxter.  
24 Mr. Lyons has a set of interrogatories and requests for  
25 documents sent to him in a civil case by the U.S. Attorney.

1 And they were sent to him weeks ago. And under the rules  
2 he has 30 days to respond, and he's just told me that he  
3 can't do that in 30 days because he can't get to his files.  
4 What is your procedure on that, and has he requested to see  
5 them?

6 MR. JENKIN: I can tell you our procedures, ma'am.  
7 We have an afternoon lieutenant who handles property  
8 requests. The procedures are the inmate request to him.  
9 It usually takes a couple days. I do not know if Inmate  
10 Lyons --

11 THE COURT: Would he be permitted to see all of  
12 his legal papers?

13 MR. JENKIN: Yes, ma'am, but he couldn't take them  
14 all out.

15 THE COURT: He could sit there and work and answer  
16 these questions and work with those papers?

17 MR. JENKIN: Pardon me, ma'am?

18 THE COURT: He could work with these papers in a  
19 room?

20 MR. JENKIN: He's the one that wanted records  
21 boxed, which is -- I don't know -- maybe 3 foot square of  
22 legal property, so he's allowed to take a substantial  
23 amount back to his cell.

24 THE COURT: Can he have a table and sit in the  
25 property room and work on these things for an hour or two

1 at a shot?

2 MR. JENKIN: We can make an exception to that,  
3 yes, ma'am, but that isn't common practice.

4 THE COURT: The U.S. attorney is hand-tied to keep  
5 this case going without answers to these things, and he  
6 could just complain for months, "I can't do it, I can't get  
7 there."

8 MR. JENKIN: Okay. We can set something up like  
9 that.

10 MS. HAYWOOD: Your Honor, in terms of me paying  
11 for the copying, how would that work?

12 THE COURT: Help me out on that, too. She would  
13 pay for the copying of the documents she wants. Would you  
14 just bill the U.S. Attorney?

15 MS. HAYWOOD: My office would pay, but we need the  
16 documents quickly.

17 THE COURT: Is he still on?

18 MR. JENKIN: Yeah.

19 MR. LYONS: Are you asking for us to make copies?

20 THE COURT: Yes. Some of the documents she's  
21 asking copies of, he would give them to you to make copies,  
22 but he doesn't have to pay for them; she does.

23 MS. HAYWOOD: We're not allowed to pay for  
24 anything in advance, so if you would copy them and send us  
25 a bill, we would pay you right away.

1 MR. JENKIN: How much are we talking about?

2 THE COURT: How much do you charge a copy?

3 MR. JENKIN: We charge the inmates 10 cents a  
4 page, but if it's 30, 40 pages, we can make the copies.

5 THE COURT: And just send them.

6 MR. JENKIN: It seems a little ridiculous to even  
7 charge you for them.

8 THE COURT: We'll see how much it is. We don't  
9 know. Can I talk to Mr. Lyons again, please?

10 MR. JENKIN: Yes, ma'am.

11 MR. LYONS: I didn't hear most of the conversation  
12 that was going on.

13 THE COURT: I'll tell you what I asked him. I  
14 asked him what the procedure was for you to see your  
15 property, and you heard his answer. And then I asked him  
16 if there was a way that he could have you at a table in the  
17 property room for a couple hours or an hour at a time so  
18 that you could work on these with your property. And then  
19 we asked and he said yes, that they could arrange -- make a  
20 special exception. And then we asked him if -- Ms. Haywood  
21 asked him if he would send her the bill for the copies of  
22 the documents that you will give him to copy that will  
23 respond to the production of document request, and he said  
24 it depends on how many there are.

25 MR. LYONS: Okay. Basically, that's going to be a

1 lot, because she asked for --

2 THE COURT: I suspect her requests are limited  
3 mainly to the statute of limitations.

4 MS. HAYWOOD: It's the statute of limitations and  
5 any evidence that corroborates his claim that excessive  
6 force was used against him.

7 THE COURT: By Special Agent Van Slyke.

8 MS. HAYWOOD: By Special Agent Van Slyke.

9 MR. LYONS: She also asked for something on  
10 damages, compensatory damages, items on compensatory  
11 damages.

12 MS. HAYWOOD: I probably have a standard, any  
13 diaries or any notes that relate to the incident at issue,  
14 also any claims that support your claim for emotional  
15 suffering, that type of request that's standard.

16 THE COURT: Do you have documents on that? You  
17 don't have to give her things that she has.

18 MS. HAYWOOD: You don't have to give me things,  
19 obviously, that you don't have. You don't have any medical  
20 records. I asked him for any records of any treatment he  
21 received as a result of the alleged assault, that type of  
22 thing.

23 THE COURT: If you don't have those things,  
24 then --

25 MR. LYONS: Your Honor, in regard to the -- to her

1 request regarding her argument on the statute of  
2 limitations, when I was at Huntington I did not have access  
3 to a photocopy machine. They did no copying, period. So I  
4 had to send the original -- in response to your report and  
5 recommendation, I had to send the original copy of the cash  
6 slip that was signed, and, I believe, the request slip that  
7 was sent to the business manager to process the forms and  
8 so forth. I had to send the original copies to the court.  
9 I believe I made a copy. I'm not sure if I made a copy by  
10 request, but if I hadn't, then it's there at the  
11 courthouse. How would I obtain that?

12 THE COURT: If you don't have it in your  
13 possession, you don't have to give it up. Let me tell you  
14 what I have. We just pulled that document.

15 MR. LYONS: I did put a notation on the bottom.

16 THE COURT: I have an Exhibit A and it has in it a  
17 certified mail -- a copy of the certified mail of the time  
18 you received the letter and how it had to be forwarded to  
19 you because you were no longer at Huntington and it went to  
20 the Pittsburgh box office and it was received November 14,  
21 2003. We have that as Exhibit A. Exhibit B is the  
22 instruction sheet that you used. Are you talking about  
23 what you sent to the clerk's office?

24 MR. LYONS: Yes.

25 THE COURT: Okay. But you don't have to respond



1 about documents you don't have. Under the rules the only  
2 things you give in response to these things are things in  
3 your possession. Then you write down on a piece of paper,  
4 "You asked for documents for number 3. I don't have those.  
5 The court has them," or whatever, okay?

6 MR. LYONS: Okay. Because she requested it, and I  
7 have a notation on the bottom saying that I could not  
8 provide this to the defendant because I didn't have access  
9 to a copying machine. I provided a copy to the Court, but  
10 I could not provide one to the defendants.

11 THE COURT: Is it in your possession now?

12 MR. LYONS: The report? The motion?

13 THE COURT: You didn't send me a copy. You sent  
14 me the original.

15 MR. LYONS: I sent you originals and said I could  
16 not provide a copy to the defendant because I did not have  
17 access to a copy machine, but I do believe I had a copy of  
18 the cash slip and request slip. I have to go through my  
19 property and look.

20 THE COURT: What I have here is a cash slip, here  
21 it is, received March 5, 2003. This looks like an  
22 original.

23 MR. LYONS: Do you know what's written on that.

24 THE COURT: Yes. It says the facility number, the  
25 location, I guess, where you are, 10-28 D something, date,

1 2-25-03, items to be --

2 MR. LYONS: That's it.

3 THE COURT: Items to be charged to my account,  
4 postage for legal mail.

5 MR. LYONS: That's it. That's the one that she's  
6 asking for to show that I mailed it out on the 25th, but I  
7 couldn't mail it on the 25th -- what's the date on the  
8 bottom that it that says that it went out? What was the  
9 date on the bottom of it?

10 THE COURT: There is no date on the bottom. What  
11 it says is where it says witness signature, it says "COI  
12 Kaufman refused to sign copy for clerk."

13 MR. LYONS: Right. That's the document. That's  
14 the document right there that she had requested. Is there  
15 a way that I can get a copy of that? If I can get a copy  
16 of it, I can make a copy of it. Now -- I mean, I'm not at  
17 Huntington anymore. At Huntington you can't make copies.  
18 Here you can make copies. And I can provide that to her in  
19 her request for documents.

20 THE COURT: The first time you requested,  
21 according to this, money for postage was on February 25th,  
22 and your deadline was the 27th.

23 MR. LYONS: Right. I couldn't mail it out until  
24 the 25th. That's when it came back from the records  
25 office. They mailed it back to me. They sent it back to

1 me on the 25th, and that was the day I mailed it out, the  
2 same day I got it back. I couldn't mail it on the 22nd  
3 because I didn't have it. Then I sent you, also, a request  
4 slip from the business manager showing that I asked him to  
5 do this specifically on the 22nd, I needed this on the  
6 22nd.

7 THE COURT: I'm looking for that.

8 MR. LYONS: There's a request slip there with  
9 that.

10 THE COURT: You don't have copies of any of this  
11 stuff, Ms. Haywood?

12 MR. LYONS: I have to go through my property.

13 THE COURT: I'm asking Ms. Haywood, do you have  
14 any copies of this stuff?

15 MS. HAYWOOD: No, Your Honor.

16 MR. LYONS: I couldn't send her a copy. I put  
17 that on the notation of my Answer to the Court. I put that  
18 on the bottom. I said I could not send it to her, but I do  
19 have a copy for myself. Now I have to look through my  
20 property to see if it's still there. But if it's not,  
21 being that you do have a copy, I would like to retain it,  
22 if possible, to make a copy.

23 MS. HAYWOOD: I'll be in Erie within a week. I  
24 can make a copy.

25 THE COURT: You can come up here and copy it.

1 THE COURT: I don't see anything that you're  
2 saying. I see an inmate request to staff member, but  
3 that's dated the 25th, not the 22nd.

4 MR. LYONS: The 25th?

5 THE COURT: Yes.

6 MR. LYONS: That was to the business manager,  
7 right?

8 THE COURT: Yes.

9 MR. LYONS: That one she needs, too. That shows I  
10 asked for these documents to go out, I believe it was.

11 THE COURT: It says, "I request to anticipate a  
12 charge to my account for legal mail. This charge is  
13 pursuant to the procedure of directive 803. My account  
14 status is indigent."

15 MR. LYONS: Yes, that's what she would need, too.  
16 I guess that would satisfy her Request for Production of  
17 Documents on that issue. And I would look for the other  
18 issue dealing with the business manager as well, that I had  
19 asked him to complete the copies before the 22nd.

20 THE COURT: Sometimes these things --

21 MR. LYONS: I know I have the grievance for that.

22 THE COURT: Oh, good, you give her copies of that.  
23 That will help.

24 MR. LYONS: Yes, that will help in regards to  
25 that. I think I have the grievance and I have the response

1 from the superintendent saying the Court can grant me an  
2 extension of time. I was explaining to him you can't get  
3 an extension of time on a deadline like this. So they  
4 denied my grievance, but I do have that, and I will -- I  
5 believe I have that.

6 THE COURT: I don't see any other documents. I  
7 don't see anything else here.

8 MR. LYONS: Then I'll look at my paperwork and see  
9 what I have. Thank you, Your Honor, on that issue.

10 THE COURT: Sure. Ms. Haywood, you just come on  
11 to our chambers to get a copy of the file because it won't  
12 be downstairs; we're working it.

13 MS. HAYWOOD: Okay, I certainly will.

14 THE COURT: You also have to answer the  
15 interrogatories, which are questions. You just have to  
16 answer them like you would a question, all right?

17 MR. LYONS: Yes, ma'am.

18 THE COURT: And if you can sit in that work room  
19 with the documents and they give you an hour or two at a  
20 shot -- how many of them are there?

21 MR. LYONS: In regards to the interrogatories?

22 THE COURT: Yes. How many are there?

23 MS. HAYWOOD: I think about 18.

24 THE COURT: 18?

25 MS. HAYWOOD: Approximately.

1 THE COURT: You can get started on that. I'm  
2 going to give you a little more time but not much.

3 MR. LYONS: Okay. That's fine.

4 THE COURT: This man who is there with you, this  
5 man, unit manager, he told me they could make those  
6 arrangements.

7 MR. LYONS: I would like to actually base -- do  
8 you understand my handwriting, Ms. Haywood, plus the  
9 questions, I would like to limit them to exactly the page  
10 of my answer. I would like to limit them to the page you  
11 sent me. You gave me plenty of space, but my handwriting  
12 would probably take a lot of that space up, so I would like  
13 to type it, if that wouldn't be no problem.

14 MS. HAYWOOD: Whatever. I can understand your  
15 writing. You write fine. You can write on the backs, too,  
16 if you would like.

17 THE COURT: That might be easier, because I don't  
18 know if you can arrange to have a typewriter and --

19 MR. LYONS: The typewriter is here, but I'll have  
20 to arrange a day.

21 THE COURT: Why don't you just handwrite it, and  
22 that way -- time is of the essence.

23 MR. LYONS: Okay. I'll do that.

24 MS. HAYWOOD: If Ms. Haywood is planning to do  
25 another dispositive motion, we have to get moving.

1 MR. LYONS: That's fine.

2 THE COURT: When are they due?

3 MS. HAYWOOD: I sent them March 18.

4 THE COURT: Probably the 21st.

5 MR. LYONS: No, they were due on the 18th. I  
6 received them, because I remember --

7 THE COURT: All right.

8 MR. LYONS: I do have a copy. It was due on the  
9 18th, today.

10 THE COURT: Then you have to respond to her. She  
11 has to receive a response by April 15, tax day.

12 MR. LYONS: April 15?

13 THE COURT: Yes.

14 MR. LYONS: I'll have it before then.

15 THE COURT: Excellent.

16 MR. VILLELLA: If she's going to file a  
17 dispositive motion, we'll join in that.

18 MR. LYONS: I could not hear that, Your Honor.  
19 Say that again.

20 THE COURT: Attorney Villella said if Attorney  
21 Haywood files a dispositive motion on that, he's going to  
22 join in it.

23 MR. VILLELLA: I assume Mr. Wellsby would, too.

24 MR. LYONS: A dispositive motion on the  
25 interrogatories?

1 THE COURT: On the statute of limitations issue,  
2 if she files another one after she looks --

3 MR. LYONS: He's going to join.

4 THE COURT: He's going to join in, and so is  
5 Mr. Wellsby, so there may be another round of trying to get  
6 rid of the case before trial based on statute of  
7 limitations after they see these documents, okay?

8 MR. LYONS: All right.

9 MR. VILLELLA: That's what they're telling me.

10 MS. HAYWOOD: Your Honor, can I have until April  
11 30th to take his deposition, then?

12 THE COURT: Yes. And you understand what that is,  
13 Mr. Lyons?

14 MR. LYONS: I'm familiar with a deposition. I  
15 didn't know she wanted to take a deposition.

16 THE COURT: I didn't, either, but she just told us  
17 now.

18 MR. LYONS: Okay. April 30th.

19 THE COURT: By April 30th.

20 MS. HAYWOOD: If you get me the interrogatories  
21 before that, I'll set it up as soon as I can.

22 MR. LYONS: Okay. That would be fine.

23 THE COURT: Mr. Villella, I'm going to give you  
24 until April 15th as well.

25 MR. VILLELLA: To respond to his discovery.



1 THE COURT: To respond to this discovery as well.

2 MR. LYONS: To respond to what?

3 THE COURT: The documents we went through today,  
4 so he's going to send you what he has, and you should be  
5 receiving it sometime that same week.

6 MR. LYONS: He's going to be asking  
7 interrogatories.

8 THE COURT: No. The answers to the ones you sent  
9 him. The documents you've asked from him.

10 MR. LYONS: Mr. Villella, are you going to be  
11 sending me a copy of or -- a request for documents?

12 MR. VILLELLA: I'm tending to think not. I don't  
13 think you have any documents that you're not going to  
14 produce for Attorney Haywood that I would ask for because  
15 you're saying these people are all together engaged in this  
16 action against you. I think that's going to cover the same  
17 ground.

18 THE COURT: He doesn't think he's going to ask you  
19 for anything more.

20 MR. LYONS: How about Mr. Wellsby?

21 MR. WELLSBY: I'm not asking anything. I can't  
22 even understand why I'm here, because I had no contact with  
23 the police officer or anything at that time. But I'm being  
24 accused.

25 THE COURT: Did you get a copy of his Answer?

1 MR. LYONS: Yes, I did.

2 THE COURT: Okay. So that means that you should  
3 be getting some documents of some kind from Attorney  
4 Villella the same week that you are sending your stuff to  
5 Attorney Haywood. Are you with me?

6 MR. LYONS: Yes.

7 THE COURT: Okay. That means, for the record,  
8 Motion for Protective Order regarding Plaintiff's Request  
9 for Production, document number -- we don't know -- what's  
10 the next document number?

11 MS. SANDER: Guessing 106.

12 THE COURT: Guessing it's 106, docket entry 106 is  
13 granted in part and denied in part as specified in the  
14 hearing of March 18, 2005. That will take care of it. All  
15 right.

16 Now, we are going to have a dispositive motion  
17 deadline. I'm going to give you until May 27th to file a  
18 dispositive motion on this issue.

19 MR. LYONS: Me?

20 THE COURT: No, the statute of limitations issue  
21 for the defendants -- and everything. We're not going to  
22 have any more dispositive motions after this.

23 MS. HAYWOOD: So I can include whatever?

24 THE COURT: That's right.

25 MR. LYONS: What's the day?

1 THE COURT: May 27, until they file it. Then I  
2 will give you, to respond to that, until June 24th.

3 MR. LYONS: Okay.

4 THE COURT: All right.

5 MR. LYONS: All right.

6 THE COURT: Okay.

7 MR. LYONS: Your Honor, there's one thing I'd like  
8 to cover here.

9 THE COURT: All right.

10 MR. LYONS: For the record, 'because it hasn't been  
11 decided in the judge's response to the report and  
12 recommendation.

13 THE COURT: His is the actual order. His is the  
14 big kahuna, so keep that in mind.

15 MR. LYONS: Mr. Villella had filed an exception.

16 THE COURT: But it was denied. It was denied on  
17 March 7th.

18 MR. LYONS: Excuse me?

19 THE COURT: It was denied on March 7.

20 MR. LYONS: The exception was denied?

21 THE COURT: Yes, sir.

22 MR. LYONS: Because I didn't receive anything on  
23 that.

24 THE COURT: Well, that's because it just happened,  
25 and you know the clerk's office; it will take a week to get

1 to you.

2 MR. LYONS: Okay. Thank you.

3 THE COURT: You should be getting it shortly.

4 MR. LYONS: I just wanted to cover that for the  
5 record here.

6 THE COURT: Okay. I think that's everything.

7 Anything else, Ms. Haywood?

8 MS. HAYWOOD: No, Your Honor.

9 THE COURT: Mr. Lyons?

10 MR. LYONS: No.

11 THE COURT: All discovery will close on April 30.

12 MR. LYONS: All discovery will close on April 30?

13 THE COURT: That's correct.

14 MR. LYONS: Oh, boy. I got to get this out of the  
15 way then. Okay.

16 THE COURT: All right.

17 MR. LYONS: Yes.

18 THE COURT: Good. So you have some time to think  
19 about anything else you need.

20 MR. LYONS: Yeah, I have to do that right now.

21 THE COURT: You know what, this is a perfect time,  
22 since you're in that room looking at all your documents,  
23 you're golden. That will tell you if you need anything  
24 else.

25 MR. LYONS: Okay.

1 THE COURT: All right?

2 MR. LYONS: Yes, ma'am.

3 THE COURT: You know what you're getting, if it's  
4 available, from the City defendants.

5 Anything else, Mr. Villella?

6 MR. VILLELLA: I don't believe so, no.

7 THE COURT: At this time Mr. Wellsby --

8 MR. WELLSBY: No.

9 MS. HAYWOOD: Your Honor, one other thing. It  
10 doesn't relate to me, but Mr. Villella may want to  
11 determine how Mr. Lyons is going to pay for those  
12 documents.

13 MR. LYONS: That's a good question.

14 THE COURT: I'll tell you what. Here's what I  
15 suggest, Mr. Villella. See how much there is, and if  
16 there's a goodness of heart, if it's not too much, just  
17 send it to him, because that will keep us moving.

18 MR. VILLELLA: Might be in short supply with him  
19 over there.

20 THE COURT: Yeah, I know. If there's a ton -- the  
21 City doesn't like you a lot, Mr. Lyons, so they may not  
22 give you a break. If there isn't, you can send the  
23 documents with a bill and that can be part of the -- then  
24 you have to pay it, Mr. Lyons. That's all.

25 MR. LYONS: That will be part of the --

1 THE COURT: No. The Form of Poplis means you have  
2 to pay for the expenses of the litigation. You can send it  
3 to your account and have it paid. And if it's not paid and  
4 it comes time for trial, I may, you know, order that you  
5 pay it, so just get it paid. But the price per page is  
6 not -- it shouldn't be a lot.

7 MR. LYONS: Okay. All right. That will work, I  
8 suppose. Okay. Is there anything else?

9 MR. VILLELLA: No, not right now.

10 THE COURT: Unless you don't want all the  
11 documents.

12 MR. LYONS: No, I would like to review the  
13 documents and see what I -- basically, if I -- I would like  
14 to have the documents.

15 THE COURT: All right. All right. It's worth the  
16 money, probably. I agree. Okay.

17 MR. LYONS: Transcripts and tapes, how do we do  
18 that?

19 THE COURT: He's going to check and see if they're  
20 there, and then he'll give you a copy of the tape.

21 MR. VILLELLA: If we have a tape, we'll give it to  
22 him.

23 THE COURT: So you'll have to play it on whatever  
24 you have.

25 MR. LYONS: Okay. All right. Thank you, Your

1 Honor.

2 THE COURT: All right. And, Mr. Wellsby, I can't  
3 urge you strongly enough to hire an attorney. It just  
4 makes life easier for everybody involved. But do as you  
5 have to do.

6 We're adjourned. Thank you.

7 MS. HAYWOOD: Thank you, Your Honor.

8 MR. LYONS: Thank you, Your Honor.

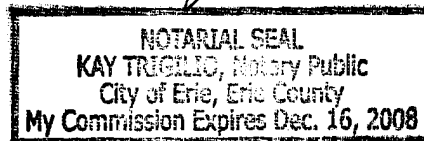
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10 (Hearing was concluded at 11:13 a.m.)  
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C E R T I F I C A T I O N

I, Kay Trigilio, a Court Reporter in and for the  
Commonwealth of Pennsylvania, do hereby certify that the  
foregoing is a true and accurate transcript of my  
stenographic notes in the above-captioned matter.

Kay Trigilio  
Kay Trigilio  
Registered Professional Reporter  
and Notary Public  
Erie County, Pennsylvania

Dated August 26, 2005





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